



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2005

Mr. Les Moore
Police Legal Adviser
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2005-04627

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 224972.

The Irving Police Department (the "department") received a request for a copy of the video tapes of a specific incident from the dash cameras of two specified squad cars. You state that no video of the incident was recorded by one of the specified squad cars.¹ You claim that the submitted information is excepted from disclosure under section 552.119 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You seek to withhold the image of an individual that is contained on the submitted recording pursuant to section 552.119 of the Government Code, which provides:

- (a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under

¹We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Econ. Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. We are informed by the Dallas Police Department that one of the individuals depicted on the submitted recording is an undercover officer with the Dallas Police Department's Narcotics Division and that the individual's life is dependent upon his anonymous status. Further, none of the exceptions found in section 552.119 apply. Based on these arguments and our review of the submitted information, we conclude that release of the undercover officer's image would endanger the life or physical safety of the individual. We therefore determine that the department must withhold any portion of the recording that includes the image of the undercover officer pursuant to section 552.119 of the Government Code.

We note that some of the information found on the submitted recording is excepted under section 552.130 of the Government Code.² This section provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130(a)(1), (2). Accordingly, you must withhold the Texas license plate number contained on the submitted recording under section 552.130.

In summary, the department must withhold the image of the undercover officer contained on the submitted recording under section 552.119 of the Government Code. You must also withhold the submitted Texas license plate number under section 552.130 of the Government Code. The remaining portions of the recording must be released.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

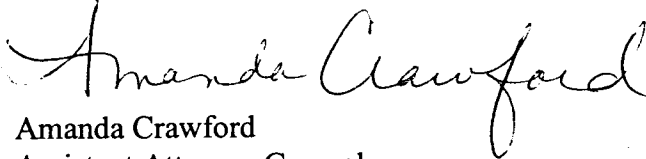
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³If the department does not have the technology necessary to obscure the undercover officer's face or the license plate number on the recording, then the department must withhold the entire recording under sections 552.119 and 552.130 of the Government Code.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in black ink and is positioned above the printed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 224972

Enc. Submitted documents

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